

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Case No. 2:19-cr-00548-CMR-1
:
v. : January 11, 2022
:
DIMITRE HADJIEV, : 10:35 a.m. - 11:30 a.m.
:
Defendant. :
.

TRANSCRIPT OF PRETRIAL MOTIONS HEARING
(HELD VIA VIDEO CONFERENCE)
BEFORE THE HONORABLE CYNTHIA M. RUFÉ
UNITED STATES DISTRICT COURT JUDGE

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1 P R O C E E D I N G S

2 THE COURT: Okay. So we will open
3 court. Good morning, everyone.

4 MS. NEWTON: Good morning, Your Honor.

5 MR. CEVALLOS: Good morning, Your
6 Honor.

7 THE DEFENDANT: Good morning.

8 THE COURT: And is our stenographer
9 ready? Hello? Very good, Inna. Thank you very much.
10 We're ready to address this. I see faces on the
11 screen. I want to clarify who is on this record and
12 participating today. I see the prosecutor, Ms.
13 Newton.

14 MS. NEWTON: Good morning, Your Honor.

15 THE COURT: Happy New Year.

16 MS. NEWTON: Same to you.

17 THE COURT: And I see Mr. Cevallos.

18 MR. CEVALLOS: Good morning, Your
19 Honor.

20 THE COURT: Good morning. And
21 congratulations. I hope everything went well.

22 MR. CEVALLOS: Yes. Thank you, Your
23 Honor. Yes. My daughter's now about a month old.
24 So, yes, everything went well. Except, of course,
25 which the Court may or may not know that the other one

1 was diagnosed with COVID so we've been quarantined
2 which I notified the government last week.

3 THE COURT: The other one who?

4 MR. CEVALLOS: My daughter. My other
5 daughter.

6 THE COURT: Your other daughter. The
7 other one, you said. Well, that's no fun. But you
8 have a fake background then because you're not sitting
9 in the back of the courtroom?

10 MR. CEVALLOS: Candidly, Judge, if my
11 real background was on, it would be a dresser with
12 clothes falling out of it. So I would like to create
13 the illusion that I am competent, if not the reality.

14 THE COURT: One thing we don't do with
15 these is audio record. We are video -- I mean we
16 audio record, we don't video record these proceedings,
17 similar to a Zoom, but we're not visually recording
18 and there's no jury here. So I don't think you have
19 to worry about it. I've seen some very interesting
20 bedrooms is what I'll say. I'm always wondering how
21 in the world very good lawyers can sit in a bedroom
22 and do a Zoom. I just don't get it. But -- and I
23 will never forget it either.

24 But, let's see, there is someone here
25 who's got the background of a jewelry store. I take

1 that to be our defendant, Mr. Hadjiev.

2 THE DEFENDANT: Correct.

3 THE COURT: Good morning. Happy New
4 Year.

5 THE COURT: Happy New Year. Are there
6 any other participants on this feed?

7 MS. NEWTON: Not for the government,
8 Your Honor.

9 THE COURT: All right.

10 MR. CEVALLOS: Your Honor, there's no
11 one on the feed right now. But if needed, as to one
12 of the motions, Mr. Hyman is available. I've given
13 him the link. And if needed, I can call him. But
14 that's just a contingency, Your Honor.

15 THE COURT: All right. That's good.
16 But none of your other co-counsel are present. Is
17 that correct?

18 MR. CEVALLOS: No, Your Honor. And I
19 notified the Court of this that I would be handling it
20 and that Mr. Scuderi may be logging in. He's got
21 court, I believe, in West Chester. I could be wrong.
22 It might be Media. I'm not entirely sure. But the
23 point is, Your Honor, he will try to get in as soon as
24 possible. I notified chambers and the government that
25 I would be handling it alone whether or not the other

1 two showed.

2 THE COURT: That's fine. Thank you.

3 So let's proceed. As you know, and
4 this is all of record now, the government moved for a
5 continuance of trial due to COVID-related instances.
6 And it was not opposed by the defense. And that was
7 approved and that is why we're meeting today to decide
8 how to handle the additional pretrial motions that
9 were filed from December to the present. And I
10 believe this morning we received a response from Mr.
11 Cevallos concerning the government's motion, Mr.
12 Hyman.

13 MR. CEVALLOS: Your Honor, not exactly.
14 Last night, I filed my response. This morning, the
15 government filed a reply. So, yes, in the last 24
16 hours, the Court has received my --

17 THE COURT: I don't get --

18 MR. CEVALLOS: -- response.

19 THE COURT: -- e-mail -- I don't get
20 e-mail -- ECF e-mail at night. So to me, I'm reading
21 it this morning, Mr. Cevallos. I'm not --

22 MR. CEVALLOS: Yes, Your Honor.

23 THE COURT: -- complaining. I'm not
24 being negative. I'm not saying you filed this late.
25 But that's really unimportant and equivocal. So let's

1 just move on. I read it this morning and also the
2 government's reply to that response. And we're ready
3 to address that.

4 But I have a few others that I'd like
5 to do seriatim and see if there's any consensus. And
6 one of them -- two of them -- well, it's a bit
7 repetitious but because we have done these pretrial
8 motions so many times in anticipation of an actual
9 trial date for a jury trial, and then because of
10 COVID, maybe one other reason, had to continue the
11 trial again, here we are. And some of this does sound
12 familiar to me. So let's just handle this one by one.

13 Defendant's motion in limine to permit
14 reference to Defendant's nationality -- that's
15 recorded at the docket as number 202. And I would
16 like to hear you out briefly on this. It's your
17 motion, Mr. Cevallos, so please explain what you
18 expect to do in an opening.

19 MR. CEVALLOS: Your Honor, in my
20 opening and throughout the case, I'm going to make
21 reference to the fact that Mr. Hadjiev is, in fact,
22 from Bulgaria.

23 THE COURT: Well, the question is why.
24 What's relevant about it?

25 MR. CEVALLOS: Your Honor --

1 THE COURT: I'm not -- you know, you
2 have to understand, it's been a long time since you've
3 seen me but I'm no different. I want to know why --
4 how it is relevant. And I'm not saying by asking you
5 that question that it obviously is relevant. It can
6 be relevant for some things and not relevant for
7 others. What is your relevancy?

8 MR. CEVALLOS: The relevancy is that
9 Mr. Hadjiev is a native-speaking -- he's a native of
10 Bulgaria and he speaks Bulgarian as a first language.
11 So this is not an issue where I'm saying that Mr.
12 Hadjiev cannot speak English. I've never said that.
13 Mr. Hadjiev can speak English. However, a key
14 component of this case is going to be, at least as to
15 money laundering, whether or not the government or a
16 government agent represented to Mr. Hadjiev that a
17 watch was, in fact, stolen.

18 Additionally at issue is going to be
19 for the structuring and the failure to file Form 8300s
20 is whether or not other bank employees, for example,
21 explained to Mr. Hadjiev regulations or not. Mr.
22 Hadjiev, as you can -- well, as Your Honor has not
23 seen but in the videos recorded surreptitiously by the
24 government or -- you know, without Mr. Hadjiev knowing
25 about it, there are several representations that are

1 made to Mr. Hadjiev. The point in referring to him
2 from Bulgaria is that I'm going to argue, not only in
3 my opening but throughout the case, that Mr. Hadjiev
4 is not familiar with slang, with phrases that we use
5 in English and that they don't have any literal
6 translation to Bulgarian. And I think that, candidly,
7 this is something the factfinder can discern from
8 watching the video itself.

9 The problem I see with the government's
10 response is, to me, evidenced in the response. The
11 government says, well, if you're going to refer to him
12 being Bulgarian, prove it up because someone who
13 speaks Bulgarian with their family and has a thick
14 accent isn't necessarily from Bulgaria. I just don't
15 think that's realistic, Your Honor. I think you might
16 be able to find some exceptions, but 99 percent of the
17 time, someone with a thick accent who speaks another
18 language around their family is likely from another
19 country. I'm not making any kind of societal
20 statement. I think that's a reasonable assumption.

21 But -- and I would also add, Your
22 Honor, and I put this in my responses, to the extent
23 this is the government seeking to have the defense
24 disclose their litigation strategy, respectfully, I
25 object. I know Your Honor doesn't see it that way.

1 Your Honor has asked me to explain the relevance. But
2 the relevance, to me, is going to be not that Mr.
3 Hadjiev doesn't speak English. He does speak English.
4 But the core of the money laundering sting count,
5 Count I, is that the government represented to him
6 that something was stolen.

7 And, Your Honor, I know you haven't had
8 the benefit of going through all the transcripts and
9 seeing the video but, Your Honor, I think it's very
10 relevant that the fact that Mr. Hadjiev speaks English
11 well enough to make some sales and do business, but
12 he's not familiar with colloquialisms, he's not
13 familiar with slang and that as a non-native English
14 speaker, this was more challenging. It wasn't a
15 simple case of the government being able to just
16 represent what they wanted. Or it wasn't a simple
17 case for structuring purposes for a bank employee to
18 just explain to him how American tax law works. In
19 fact, the government's own witness is former
20 accountants, (indiscernible) Belonsky, says, and I
21 quote, "Dimitre just didn't understand U.S. tax law."
22 That's his own words. And I think a large part of
23 that is that he's not somebody who grew up in the
24 system. He's somebody who came to it late in life.

25 So I just would add, again, not arguing

1 he doesn't speak English. Never argued that. It's
2 that it is an important consideration for the jury to
3 recognize and take into account when making critical
4 determinations -- let me just -- I'm sorry, Your
5 Honor. I should have said this at the front end.
6 Other than the counterfeiting count, almost -- I'm
7 sorry -- every other count in this indictment requires
8 some degree of knowledge by Mr. Hadjiev. In other
9 words, this is not a case where you simply say --

10 THE COURT: And what does that --

11 MR. CEVALLOS: -- in America --

12 THE COURT: -- have to do with where he
13 was born?

14 MR. CEVALLOS: Pardon, Your Honor?

15 THE COURT: The requirement that you
16 speak of has nothing to do with where he was born. So
17 maybe you should complete your sentence or your
18 argument.

19 MR. CEVALLOS: It's completed, Your
20 Honor. I see Your Honor has --

21 THE COURT: No, no. Don't start that,
22 Mr. Cevallos. Don't start --

23 MR. CEVALLOS: I said I see Your Honor
24 understands.

25 THE COURT: This is unbelievable that

1 you would come back after this time and pretend -- and
2 it is pretending -- that I don't review everything and
3 I don't know or don't want to know what you're talking
4 about. When you say there's not one count here that
5 doesn't require intent, that's true except --

6 MR. CEVALLOS: That's not what I said,
7 Your Honor.

8 THE COURT: -- what does that have to
9 do with where he's from or whether he has an accent?

10 MR. CEVALLOS: No, Your Honor. That's
11 actually not what I said. What I said was other than
12 the counterfeiting, these regulatory crimes require to
13 some degree -- and I'm paraphrasing -- that the
14 defendant be aware that he is doing something in
15 violation of regulations. That makes them unique
16 among crimes. And for that reason, Mr. Hadjiev's
17 understanding of what people told him, for example, a
18 law enforcement agent representing to him that
19 something is stolen, that he is not a native English
20 speaker is important for the jury to understand.

21 And then just lastly, Your Honor, I
22 mean, the government's saying that they can introduce
23 a Bulgarian interpreter and they can introduce all
24 this evidence, but I'm somehow precluded from saying,
25 hey, my client is from Bulgaria. I don't understand

1 that. I genuinely don't, Your Honor. I'm not being
2 flip. I don't understand that position by the
3 government. And if Your Honor does then I apologize
4 for that part of it. But I maintain his origin has a
5 lot --

6 THE COURT: That little phrase you just
7 --

8 MR. CEVALLOS: -- to do with his
9 understanding.

10 THE COURT: -- stuck in -- that little
11 phrase you just stuck in will come back to haunt you.
12 If Your Honor does, I don't know what it is. Mr.
13 Cevallos, you have not got a chance to convince a jury
14 that I am on one side or the other. Your little
15 phrases were offensive before. Now that we're closer
16 to trial, because we will have a trial date -- don't
17 say things like that. Don't say things --

18 MR. CEVALLOS: Your Honor, I --

19 THE COURT: -- like that in my
20 courtroom here or there. I have not pre-judged.

21 MR. CEVALLOS: Your Honor, I don't know
22 what you're talking about.

23 THE COURT: Why are we having this?
24 Why are we having this hearing? Because I didn't
25 prejudge. And I wanted to hear the sides out before I

1 made a decision. Some judges would not have given you
2 a hearing. You take something where you could
3 actually win an argument and turn it around so that
4 you use so many words, sometimes words that don't even
5 apply that it's not going to work for you. It's time
6 just to be straight on what you're saying. I think
7 the written was a little clearer than your oral. But
8 I've heard enough.

9 Ms. Newton?

10 MS. NEWTON: Your Honor, as the Court's
11 aware, the only thing we're asking is that unless Mr.
12 Cevallos is going to produce competent evidence during
13 the trial with respect to Mr. Hadjiev's background, he
14 cannot refer to it in the opening. The government
15 agrees that whether or not Mr. Hadjiev is Bulgarian
16 does not matter. It is not relevant. Certainly, the
17 jury is going to hear that Mr. Hadjiev has an accent.
18 And Mr. Cevallos can make whatever arguments he wants
19 to with respect to the fact that Mr. Hadjiev has an
20 accent. But the jury will hear the recordings with
21 the undercover officer. The jury will hear the
22 recording with respect to the Bulgarian language, as
23 the Court is aware, simply because someone speaks in a
24 foreign language does not mean that's where they're
25 from. Case in point is an Armenian who speaks

1 Russian. People who choose to speak Spanish, people
2 who choose to speak French. But it's not relevant to
3 the issues that are -- that we have here before us in
4 this case.

5 But what the government was primarily
6 trying to do is to ensure that the defense is aware,
7 if they want to put forth statements in the opening
8 with respect to nationality, with respect to his
9 background, that they need to be sure that there's
10 going to be competent relevant evidence presented
11 during the trial of those particular facts.

12 THE COURT: Well, I could envision very
13 easily the facts of the case, even the government's
14 case, exposing that he is a speaker of another
15 language first --

16 MS. NEWTON: Absolutely, Your Honor.

17 THE COURT: -- that being Bulgarian --

18 MS. NEWTON: Absolutely.

19 THE COURT: -- because they're going to
20 hear his voice. They're going to hear on the videos
21 or the tapes and they will have questions if it's not
22 addressed right away. I see it as informational.

23 MS. NEWTON: Absolutely. And all the
24 government is saying is that if that evidence is going
25 to be presented, whether they -- the point the

1 government is trying to make is I wouldn't -- if I
2 were defense counsel, I wouldn't want to assume the
3 government will present this evidence. But if there
4 is evidence that they want to put forward about Mr.
5 Hadjiev's background that they should be sure that
6 there is going to be that evidence put forth during
7 the trial that is simply not going to be referred to
8 in an opening and left there. That's the only point
9 of the motion.

10 THE COURT: Makes sense to me to be
11 aware of that very big problem. But is there a chance
12 that the government won't be producing tapes with his
13 accent clearly heard on it?

14 MS. NEWTON: Your Honor, absolutely.
15 We'll be presenting the recordings of the undercover
16 officer. We also will be presenting recordings from
17 the FDC. And it will be noted that the language in
18 which Mr. Hadjiev is speaking with someone else is
19 Bulgarian. There's no question about that we will.

20 THE COURT: Okay. That would seem to
21 me to be opening enough to refer to it. But I also am
22 hearing the government's warning there that they may
23 not be utilizing that in any other way. But the
24 defense certainly can to a certain --

25 MS. NEWTON: Of course.

1 THE COURT: -- limited degree.

2 MS. NEWTON: Of course, Your Honor.

3 THE COURT: All right, Mr. Cevallos.

4 This is a question of opening doors and relying on the
5 record. I am not a judge that likes to let things
6 happen and then have to strike. Juries don't like
7 that. And I like to give as pristine a case to a jury
8 as I can. So I have no problem with you mentioning
9 that he speaks Bulgarian as his first language. I
10 have no problem with that. I don't care if he was
11 born there or not because we earlier ruled this is not
12 about his citizenship status, immigration status or
13 anything else. So keep that very clear.

14 What do you clearly, Mr. Cevallos,
15 intend to say in your opening about this so that we
16 are all on the same page?

17 MR. CEVALLOS: Your Honor, I intend to
18 refer to his speaking Bulgarian as his first language.
19 And respectfully, Your Honor, I can't say I've
20 crystalized the rest of my opening at this point. But
21 that he is Bulga -- excuse me -- Bulgarian is his
22 first language and that the jury will hear
23 conversations using slang and that the jury should
24 consider -- no, not in my opening. Excuse me. And
25 that they will see -- hear Mr. Hadjiev's responses to

1 that slang. And since my opening is just a preview of
2 the facts that I think will come out, that should be
3 it, Your Honor. And if Your Honor is saying that it
4 should be just that he speaks Bulgarian as a first
5 language, I can adhere to that. My main concern is
6 opening the door to his immigration status coming in
7 but referring to what I see as an issue that's going
8 to come in no matter what, that he speaks with an
9 accent and speaks Bulgarian to his family.

10 THE COURT: It's one thing to say that
11 Bulgarian is his first language and he doesn't
12 understand what he's hearing or slang. It's another
13 to say that he doesn't speak English to be clearly
14 understood. Do you mean to do both?

15 MR. CEVALLOS: What I'm -- more the
16 first of what Your Honor said, the former, that he
17 speaks Bulgarian as a first language. And therefore,
18 his understanding, particularly of slang, will be less
19 than that of the ordinary factfinder given that they
20 bring their ordinary sensibilities to this trial, that
21 Mr. Hadjiev has something below the floor or below the
22 standard for what people understand when it comes to
23 slang. And, Your Honor, there's a lot of slang in the
24 transcripts and in the video. And the government's
25 going to say, and I understand, they're going to say

1 that's slang. And there's case law. They have case
2 law. They've cited it before in their memo supporting
3 the idea that you don't need to say flat out the words
4 "stolen" and I understand that. But at the same time,
5 the government must represent. That's the magic word.
6 And so, whether or not they represented to somebody
7 who isn't familiar with slang I think is relevant
8 to -- is relevant when you're dealing with someone who
9 does not speak English as a first language but as a
10 second language.

11 THE COURT: All right. I will be as
12 clear as I can and concise as I can. And I suggest
13 that you be, too, Mr. Cevallos. I know you haven't
14 prepared your opening yet even though we were supposed
15 to go to court today and try the case. But I am very,
16 very sure that there's a limited purpose for this that
17 is relevant and that is about his speaking and
18 comprehension. And I can see why that would be
19 relevant to several matters in this case. And that's
20 permitted in the opening. And no references to any
21 other characteristic that I have previously ruled
22 would not come in, meaning his status as an immigrant.
23 All right?

24 MR. CEVALLOS: Yes, Your Honor.

25 THE COURT: Okay. Defendant's motion

1 in limine to preclude reference to prior arrest,
2 investigation and prosecution. Document number 203.

3 Ms. Newton?

4 MS. NEWTON: Yes, Your Honor.

5 THE COURT: Does the government have
6 any prior convictions to use for impeachment purposes
7 should he testify?

8 MS. NEWTON: No, Your Honor.

9 THE COURT: So there aren't any --

10 MS. NEWTON: No, Your Honor.

11 THE COURT: -- that you are aware of.

12 MS. NEWTON: That's correct. That is
13 correct.

14 THE COURT: So, Mr. Cevallos, I was
15 sitting here scratching my head when I first read my
16 motion. I didn't know that this referred to anything.

17 MR. CEVALLOS: May I, Your Honor?

18 THE COURT: Please.

19 MR. CEVALLOS: There are some areas in
20 the transcripts, and they may not be transcripts that
21 the government is introducing. The government isn't
22 necessarily introducing all of the transcripts or the
23 recordings -- that in which Dimitre -- or Mr. Hadjiev
24 refers back to some earlier trouble that he had. And
25 as I said, Your Honor, I can't cite the exact date.

1 My apologies, Your Honor. But I want to be careful
2 that the government doesn't inadvertently, arguably,
3 Your Honor -- I'm not saying that they would do so
4 intentionally. But as we're going through trial, that
5 might come in. So that's why I put the motion on the
6 record. However, the government's response was I
7 thought very reasonable. They -- the government said
8 they don't intend to introduce his prior troubles in
9 the early -- or in the last decade in the Court of
10 Common Pleas.

11 And then, Your Honor, I candidly --
12 it's a thorny issue. And I just want to clarify for
13 the government. When I wrote that the government may
14 not introduce the jail house informant, I didn't mean
15 it's a problem with the English language. I didn't
16 mean that the government cannot. I meant that they
17 might not. And the government responded that they
18 absolutely intend to. That's fine. I understand Your
19 Honor already ruled on that. If there was any
20 confusion with the word "may" then I apologize.
21 However --

22 THE COURT: I think that's a different
23 motion but we'll get to it. I'm talking really about
24 the prior investigations and prosecutions.

25 MR. CEVALLOS: Well, yes, Your Honor.

1 If the government isn't intending to introduce it then
2 I have no dispute as to the prior investigations,
3 arrests and whatnot, Your Honor.

4 THE COURT: Yes. There's no reason for
5 that to come in.

6 MS. NEWTON: Your Honor, just to
7 clarify, though. And I'm not sure exactly what Mr.
8 Cevallos is referring to. But if he's referring to a
9 statement where Mr. Hadjiev says I had prior troubles,
10 that is not necessarily referring to a conviction and
11 arrest or a prosecution. So I'm a little concerned
12 about his reference to say we cannot say -- we cannot
13 introduce something where Mr. Hadjiev himself says I
14 had trouble because, to me, that is not the same as
15 the government introducing evidence of a prior arrest,
16 conviction or prosecution.

17 MR. CEVALLOS: Your Honor, I can help.
18 I'm not saying that. The government's right. That
19 would be too vague. I'm talking about anything that
20 would identify prior legal criminal problems in
21 specifically the Court of Common Pleas. And that's
22 it, Your Honor. I was just speaking in shorthand.

23 THE COURT: Okay.

24 MR. CEVALLOS: So my apologies.

25 THE COURT: So I think it's clear that

1 no Court of Common Pleas prior arrests or
2 investigations will be introduced by the government.
3 And opening doors, of course, during a trial is always
4 a calamity and it could happen. We'll take things one
5 step at a time if that does. But if the defense opens
6 doors, and that is possible because there are things
7 that happen in trial that you don't anticipate, we
8 will then assess whether or not the government wishes
9 to pursue anything in terms of rebuttal or
10 cross-examination. I highly doubt that if it's an
11 arrest that ended up with no charges. I highly doubt
12 if it's an investigation that did not result in
13 charges. But we will leave that as clear as it can
14 be.

15 Okay. The next one is defendant's
16 motion in limine to preclude reference to pretrial
17 incarceration and requests for a limiting instruction.
18 Of course, this has to do with the recordings that
19 have already been ruled authentic. And I'd like to
20 know what we didn't cover in the ruling, Mr. Cevallos,
21 that brings this motion part way back.

22 MR. CEVALLOS: Well, Your Honor, first,
23 in the government's response, it seems we have an
24 agreement as to the stipulation, at least with the FDC
25 calls. So as -- so to that extent, I think the motion

1 is resolved that we would stipulate to the calls
2 themselves.

3 The government also adds that to the
4 extent this motion is asking for suppression of
5 testimony by a cooperating witness who is in the FDC
6 when Mr. Hadjiev was detained, that's not what we're
7 asking at all, Your Honor. And candidly, I've put my
8 motion -- it's a thorny issue, but that, of course,
9 he's going to be testifying about having been with Mr.
10 Hadjiev in the FDC. I can't imagine excising that.
11 If the Court could think of a way to do it then great
12 but I don't know that it can. So instead, I propose a
13 limiting instruction. I put the nature of the
14 limiting instruction in my motion. And then that's
15 it, Your Honor.

16 THE COURT: All right. Ms. Newton,
17 what do you think of the limiting instruction?

18 MS. NEWTON: Your Honor, I think the
19 limiting instruction -- it does not tell the truth.
20 Not every defendant automatically is detained at the
21 FDC for a period of time. And to tell that to the
22 jury, I think is just wrong. What we have proposed
23 for the Court is we don't need to say that Mr. -- that
24 our cooperating witness knew Mr. Hadjiev from the FDC.
25 What we will ask him is does he know Mr. Hadjiev, how

1 long has he known Mr. Hadjiev, did he have
2 conversations with Mr. Hadjiev, did he have
3 conversations with Mr. Hadjiev about this business.

4 As the Court aware, there are witnesses
5 who are detained in the federal detention center who
6 testified at trial tomorrow every month of the year.
7 And the government read the motion was that Mr.
8 Cevallos was asking to preclude this witness from
9 testifying. But we believe as we normally do in these
10 circumstances that we do have a way to limit any
11 possible prejudice to Mr. Hadjiev to what we outlined
12 as to what we ask our cooperating witness.

13 MR. CEVALLOS: May I briefly please
14 respond, Your Honor?

15 THE COURT: So the government can
16 produce the informant's testimony without reference to
17 where they were associating. That's what you intend
18 to do.

19 MS. NEWTON: That's what we intend to
20 do, Your Honor.

21 THE COURT: Mr. Cevallos?

22 MR. CEVALLOS: Your Honor? Your Honor,
23 yes. I actually have to object to that. And that's
24 why I proposed the limiting instruction. Key to any
25 jailhouse informant cross-examination in my mind is

1 the fact that he's a jailhouse informant. It would
2 only help the government to propose that they met
3 somewhere neutral, at a Starbucks for example, just to
4 discuss these things when (indiscernible) is going to
5 be our argument as it is in most jailhouse informant
6 cases that this informant contacted the government in
7 order to save his own skin, to get a better deal.

8 So I understand that I am creating a
9 thorny issue, Your Honor. And that's why I'm asking
10 you to give a limiting instruction.

11 THE COURT: It's a little thorny
12 because of how you filed the motion. You asked the
13 Court to preclude reference to pretrial incarceration
14 when that's really not what you want. You want a
15 limiting instruction. You want a limiting instruction
16 to the jury so that you can pursue your
17 cross-examination of the jailhouse informant and your
18 argument. I get it. But you ask for something that
19 you really -- talk about equivocating.

20 I think that the government can choose
21 not to say the informant was from the FDC. But I also
22 think that the defense can choose to elicit facts
23 about him being in the FDC. I don't see those two
24 choices as being the problem. Even if nothing was
25 said, you could have jurors that could be sitting

1 there (indiscernible), you know, where did they --
2 have that conversation. And they might be thinking
3 it. So it's best to have or to be prepared that we're
4 going to need a limiting instruction. It's best to be
5 forward with it.

6 MS. NEWTON: Your Honor, if I could
7 propose the limiting instruction that the jurors are
8 informed that the fact that Mr. Hadjiev may have been
9 detained at the FDC for a period of time should not be
10 considered by them. And I think that would accomplish
11 what we need to accomplish without telling them
12 something that is not true.

13 THE COURT: Your last few words were
14 sort of dropped.

15 MS. NEWTON: Sorry, Your Honor.

16 THE COURT: Should not be what?

17 MS. NEWTON: Should not be considered
18 by -- should not be considered by them.

19 THE COURT: And that is a typical
20 instruction that is given for people who are obviously
21 in jail and testified and/or were in jail and
22 testified.

23 MS. NEWTON: That is correct, Your
24 Honor.

25 THE COURT: Mr. Cevallos, do you have

1 any problem with that?

2 MR. CEVALLOS: No objection, Your
3 Honor.

4 THE COURT: Okay. We will use that.

5 I'll leave it for trial for counsel to
6 ask the Court to give that type of instruction before
7 the informant testifies or later --

8 MS. NEWTON: Absolutely, Your Honor.

9 THE COURT: -- with the general jury
10 instructions. You may not choose to make that
11 decision now. So I leave that for how the trial will
12 go.

13 All right. Then the government's
14 motion to exclude testimony of Defendant's expert
15 witness, Joshua Hyman. I think that is the last
16 motion --

17 MR. CEVALLOS: Your Honor --

18 THE COURT: -- (indiscernible) parts.

19 MR. CEVALLOS: Your Honor, there's also
20 ECF 205 filed on 12/29/2021, the motion as to face
21 masks. (Indiscernible) --

22 THE COURT: Yes. I put that completely
23 separate. This is substantive as to the case. The
24 other is logistics but we're going to get to it.

25 Now I've read this motion. I've read

1 the responses. And I really do think that there is
2 room for a defense expert here. But the first thing
3 to do is to confirm that the government's motion does
4 not include contesting his qualifications as to
5 certain issues or any issues. So I need to clarify
6 that with you, Ms. Newton.

7 MS. NEWTON: Your Honor, until we
8 received Mr. Cevallos' response, we were contesting
9 his qualifications because we knew nothing about his
10 qualifications other than as a gemologist. Mr.
11 Cevallos did provide a disclosure with his response
12 and we are not contesting his qualifications at this
13 time now that we have specific qualifications with
14 respect to his work with Rolex watches.

15 THE COURT: All right. So aside from
16 qualifications, then what is the government
17 contesting?

18 MS. NEWTON: Your Honor, we do not
19 believe that the defense has provided sufficient
20 disclosures of the opinions and bases for those
21 opinions of Mr. Hyman. For example, the defense had
22 stated that Mr. Hyman will give opinions about the
23 watches that were examined in 2020. But nowhere does
24 the defense state what those opinions. And we believe
25 we're entitled to know what the opinions are. We know

1 Mr. Hyman was present at the examination but we don't
2 know what his expert opinions with respect to those
3 watches examined at that time are. And similarly,
4 there's -- and I'll start with that because that is
5 our most basic objection.

6 But as we also stated, with respect to
7 a number of other topics that the defense has listed
8 for Mr. Hyman, we don't know what the opinions are and
9 we don't know what the bases for those opinions are at
10 this time. And also, we believe that some of these --
11 and perhaps the defense can explain this. We're not
12 trying to get into trial strategy but what the
13 relevance of some of these topics are. Now the
14 government recognizes we are fronting this issue about
15 relevance. If the defense wishes to wait until trial
16 and put this forward and we will make objections, then
17 as to the relevance of other opinions, once we know
18 the opinions and their bases, certainly, Your Honor,
19 that is one way to go.

20 THE COURT: Why do you not know -- I
21 thought that there were rules about this and that
22 disclosures of the testimony of proposed expert
23 witnesses was required for both sides. Why is this a
24 mystery going into court? Mr. Cevallos, I'm going to
25 pose that question to you.

1 MR. CEVALLOS: Your Honor, to the
2 extent we hadn't provided the Rule 16(a)(1)(C)
3 summary, we can. We should have and we will, Your
4 Honor. Now that there is a delay, I put in my
5 response that this is something that we can provide.

6 THE COURT: Had there not been a delay
7 in the trial again, would we be facing this in the
8 middle of the trial because that's not appropriate
9 either. You were required to do that. And I'm not
10 the judge that would say, well, too bad. Your
11 expert's stricken. But I know that there are judges
12 that would and probably would not be reversed on
13 appeal. But I think until you do that, we don't have
14 a basis to allow any testimony without their being
15 some rule disclosure, doesn't involve strategy but it
16 does involve the expertise, the expertise, the opinion
17 that you will want to introduce at trial. Only then
18 can the government properly articulate its objection
19 if they have any. But ultimate issues, we know how to
20 rule on that. But expertise of whether or not a part
21 is indicative of a stolen watch or a stolen part, I
22 think the jury would welcome that kind of evidence.
23 It's not a question of anything except we don't what
24 really is going to be said. And I can't allow that.

25 So get that report done, Mr. Cevallos.

1 And I'm not going to rule on this until it's done.
2 And then I'll allow you to rebrief it if there's
3 continued -- if there's not an agreement as to what is
4 objected to here. But it's not the qualifications.
5 That is for sure. But we still need to know -- it's
6 on relevant testimony. And we need to know it before
7 the jury hears it. All right? That one I want to
8 hold off on.

9 MS. NEWTON: Your Honor, one other
10 issue with respect to the expert disclosure and we
11 have raised it in our motion. In the initial
12 disclosure made by the defense, they also disclosed an
13 expert, Mr. Josiah Lamb as a forensic accountant. Mr.
14 Josiah Lamb was not listed in the disclosures that the
15 defense recently made. And we are just trying to
16 determine are they still planning on calling Mr.
17 Josiah Lamb and, if so, we have the same concerns
18 about what are the opinions and the bases for the
19 opinions.

20 THE COURT: Mr. Cevallos?

21 MR. CEVALLOS: We're not planning on
22 calling Mr. Lamb. We omitted him from our most recent
23 disclosure. The first time around, we just disclosed
24 him out of an abundance of caution. And now we -- I
25 should have been clearer to the government and maybe

1 sent an e-mail and said we're not calling Josiah Lamb
2 but I just omitted him from the most recent
3 disclosure.

4 THE COURT: All right. So he is not
5 testifying at this time.

6 MR. CEVALLOS: That's correct, Your
7 Honor.

8 THE COURT: Okay. If you change your
9 mind, you've got to tell Ms. Newton and make a full
10 disclosure on it. And that includes what he would be
11 called to testify about.

12 Now I think that does it for the
13 substantive motions in limine for now. I would like
14 to address the conditions of trial which always,
15 always, always have to be related to the time the
16 trial is heard. And I read with great concern the
17 motions because I don't know if I can get the complete
18 cooperation from the administration of the court to
19 put screens up everywhere but we have requested it.
20 If we had gone to trial today, we would do that with
21 an insistence that we're in the middle of another
22 crisis in this pandemic right now. We may not be in
23 three weeks or four weeks. This is a different moving
24 type of germ. And it's much faster, much more
25 contagious. More people get it. Not as many people

1 are getting seriously sick. It doesn't mean that I
2 want anyone exposed to it.

3 The court, as a Board of Judges, has
4 also -- is also considering whether or not only
5 vaccinated people should be jurors, which we have not
6 approved, and only vaccinated people can come into the
7 courthouse which we have not approved. It seems to me
8 we have to keep the doors of justice open and we have
9 to cope with the residuals. And that means that
10 masking, double-masking, even with face shields may be
11 appropriate.

12 Which gets to the defense question of
13 wants multiple parties' face masks removed during the
14 trial which I cannot approve at this time given the
15 situation in being fluid. I think it's premature now
16 to do that. So that's how I'm going to leave that
17 ruling. I was considering moving the tables back to
18 the way they were when you had a hearing in my
19 courtroom 12A where the counsel tables were facing the
20 jury box and the jury would be seated in the gallery.
21 I still think that's safer because the jury should not
22 be sitting next to each other in those seats and there
23 wouldn't be enough seats for all the jurors if we
24 spread them out. So we will use again jurors fully
25 masked. If they want to wear face shields on it,

1 that's fine. I know that we can get face shields.
2 But I don't think too many people want to rely on just
3 face shields for protection against fast flying germs.
4 So the jurors will be in the gallery. I have not yet
5 secured a second room, courtroom, to house spectators.
6 So that is also a problem for me. Our trials are
7 public; they're open. We want them to be.

8 Anyway, that's how far I got on
9 logistical decisions which, again, have to be fluid.
10 I know that there's another concern that the defendant
11 himself is not vaccinated. And we can't ban
12 defendants from the courtroom in which they are on
13 trial. So the mask will have to be on the entire
14 time. And it has to be a KN-95 or a K-95. No other
15 kinds of mask are really fool proof. And those even
16 aren't fool proof. People with full vaccinations and
17 boosters are still getting COVID. So we have to be
18 more careful than that.

19 I want to know, Mr. Cevallos, of all
20 the things that you ask for in your motion -- which I
21 welcome because we have to deal with this anyway. We
22 would be talking about these same things even if you
23 hadn't filed the motion. We've talked about them
24 before. I proceed with caution. So how do you intend
25 to sit next to your client without him being

1 vaccinated? Just a question. How would you like to
2 be seated?

3 MR. CEVALLOS: Well, Your Honor, I
4 hadn't thought of that question for oral argument
5 purposes but I think probably the way we've been
6 seated already, I think -- six feet away from each
7 other when we've been before Your Honor. And Your
8 Honor just said that there are limitations. I
9 understand the Court can't just throw up a bunch of
10 Lexan glass all over the courtroom. So, I mean, what
11 I would like to have happen versus what is realistic,
12 I mean, I can talk about my -- what would be great to
13 have but, Your Honor, I mean, I guess we would start
14 with distance. And really, candidly, Your Honor, at
15 the end of the day, my own comfort in being close to
16 the defendant wasn't really the purpose of the motion.
17 It's, as Your Honor said, putting these issues --

18 THE COURT: Well, I ask you --

19 MR. CEVALLOS: -- before the Court --

20 THE COURT: -- the question not because
21 you included it in your motion but because it's only
22 fair to ask you that question. It's only fair to say
23 how can you ask everyone else to take their masks off
24 which you did. What are you going to be doing sitting
25 next to an unvaccinated person? Six feet? Is that

1 enough? Because that's fine with me. But he can't be
2 near anybody else that doesn't agree to be in his
3 presence, in his sphere of air. I mean, I think that
4 there's protocols here that are not strategic in terms
5 of winning a case. They are logistical for safety so
6 that we can have a trial that doesn't get interrupted
7 by two jurors or an agent or a witness getting sick in
8 the middle of it. And we have to struggle with
9 regulations. There is no way to say you can't come in
10 this courtroom unless you're vaccinated. Or you can't
11 sit on this jury unless you're vaccinated. We know
12 that that is not our role. Our role is to make it as
13 safe as we can taking all of those particular
14 preferences into account. This is an important for
15 everybody. So I was curious about that. I do think
16 we have another face on the screen.

17 MR. SCUDERI: Your Honor, that's me.

18 THE COURT: Mr. Scuderi, I want to
19 announce you because we are recording this.

20 MR. SCUDERI: Yes. And, Your Honor,
21 I'd like the opportunity to speak to the defendant to
22 try to get him vaccinated. What you're saying is
23 tremendously appropriate since he's not vaccinated and
24 I think it's wrong.

25 My other --

1 THE COURT: We're losing your voice,
2 Mr. Scuderi.

3 MR. SCUDERI: Your Honor, I would like
4 --

5 THE COURT: Can you turn up your
6 volume, please?

7 MR. SCUDERI: Can I turn up my volume?

8 THE COURT: Or maybe the microphone
9 part is muffled?

10 MR. SCUDERI: I don't --

11 THE COURT: Is ours up?

12 MR. SCUDERI: Where is it? How about
13 now? Is that better?

14 THE COURT: I think it is.

15 MR. SCUDERI: Okay. Sorry, Your Honor.

16 THE COURT: It's okay.

17 MR. SCUDERI: Screen and not the
18 microphone.

19 Your Honor, I would like the
20 opportunity to speak to the defendant again about him
21 being vaccinated because I would not feel safe being
22 near him. And I intend to be sitting next to him with
23 Mr. Cevallos on the other side.

24 Also, my other question is whether we
25 are able to ask the jurors, the prospective jurors

1 whether they are vaccinated because I think that would
2 be a safety issue for jurors who are sitting with
3 people who are unvaccinated. Now I know it's up to
4 the Court and whatever you say we will do, but,
5 obviously -- but I think that's a major safety issue
6 if -- I don't whether it's six feet or ten feet. If
7 the jurors are with somebody who is unvaccinated then
8 statistically, the six feet or ten feet is not a
9 definitive term. That's what --

10 THE COURT: Okay. You know, I don'[t
11 think asking jurors is the problem because they're
12 going to be on a questionnaire. We just can't strike
13 them for that reason unless there is a decision, a
14 stipulation that the defendant is and the government
15 are willing to enter into that says we will not have
16 anyone but fully vaxed or boosted or both jurors.

17 MR. SCUDERI: Well, I would --

18 THE COURT: That is completely out of
19 my authority to order unless it's by stipulation and
20 waiver because it's a jury of one's peers. It
21 involves all -- so many issues, constitutional issues,
22 that we don't wish to open that door and run afoul.
23 You can talk about that as you will. But that is an
24 option. I didn't ask the government what they thought
25 of that option.

1 MR. SCUDERI: I would think that K.T.
2 would agree.

3 THE COURT: Well, she can answer for
4 herself.

5 MS. NEWTON: Thank you, Your Honor.
6 Your Honor, I've actually discussed this in my office.
7 And if need be, we certainly will put together a
8 motion for it. But the government would be willing to
9 stipulate to having only vaccinated jurors on this
10 jury for the simple reason of safety of everyone in
11 the courtroom.

12 MR. SCUDERI: I agree, Your Honor. I
13 always agree with K.T.

14 MS. NEWTON: I wish I could say that
15 was true, Your Honor.

16 THE COURT: But Mr. Cevallos is not.
17 So I'm going to ask him what his position is. Mr.
18 Cevallos?

19 MR. CEVALLOS: I agree, Your Honor.

20 THE COURT: Okay. So you have to get
21 your client to agree. And we would love that waiver
22 in writing, that agreement. And we will colloquy him
23 appropriately when that is necessary. And it will be
24 necessary should we start trial in the next three
25 months or longer. So I think that's the only way we

1 can do it. But it is a way to safeguard jurors'
2 concerns. And I will be quite blunt. When the jury
3 trials have started to resume and they resumed last
4 week, things were done pretty well except that jurors
5 started calling up and saying we're not coming in.
6 We're just not coming in.

7 MR. SCUDERI: Right.

8 THE COURT: And you don't hold jurors
9 in contempt when health and safety is such a difficult
10 issue right now. And that doesn't define it.

11 MR. SCUDERI: Your Honor, I could not
12 agree more. And I had COVID. It is not a fun time.
13 So all the defense team is fully vaccinated. I will
14 state to the defendant. I will force him to get
15 vaccinated. And I don't think any of us wants anybody
16 to get sick during the trial.

17 THE COURT: Well, as I recall, the
18 defendant got COVID at the FDC.

19 MR. SCUDERI: Yes. Yes. Yes.

20 THE COURT: But that doesn't guarantee
21 future immunity.

22 MR. SCUDERI: Correct.

23 THE COURT: And neither does the
24 vaccine guarantee that.

25 MR. SCUDERI: Correct.

1 THE COURT: So we're all on the edge of
2 the cliff here.

3 MR. SCUDERI: Right. But it is
4 helpful. It is one step -- it is one further
5 precaution. And I agree with K.T.

6 THE COURT: Okay. Any other parts of
7 that motion, Mr. Cevallos, that you'd like to bring
8 back to discussion?

9 MR. CEVALLOS: No, Your Honor.

10 THE COURT: Okay. We will do our best
11 to get those screened in. But they probably won't
12 give them to me because I don't have a trial next
13 week. That one continued for other reasons. And I
14 will try and keep our courtroom ready. But I am
15 scheduled with various trials up until May. Some of
16 those may go away through a guilty plea. Therefore, I
17 may try to put this back on. But, of course, I know
18 you all have concerns, witnesses, other obligations,
19 but this case has got to get tried. It must be tried.
20 I agreed, however, with the government's assertion in
21 the motion to continue, which was also not opposed,
22 that this is not the case that is the exigent or
23 emergent case. (indiscernible) will have to go first
24 and other concerns. So I'm trying to be reasonable
25 and bend. But I don't want to bend too often. I

1 could have kept this on the trial wheel. I could have
2 had a jury. We would be facing all of these problems.
3 And I think everybody has to go home to loved ones and
4 co-workers and it's not fair to risk one's life. So I
5 agree the definitions of this case not having to be
6 ahead of other cases. But I have always made it a
7 priority.

8 All right. Is there anything else we
9 can talk about, counsel?

10 MR. SCUDERI: No, Your Honor.

11 MR. CEVALLOS: No, Your Honor.

12 THE COURT: All right.

13 MS. NEWTON: Nothing from the
14 government, Your Honor.

15 THE COURT: Okay. Did Mr. Hadjiev want
16 to talk to his attorneys before we stopped? Because
17 we can do that if you need?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Okay. Thank you. Thank
20 you, Mr. Hadjiev. Then we will adjourn this matter.
21 And we will put our agreements and understandings and
22 rulings in a written order so that we all remember
23 what we said. And we will hopefully see you soon.
24 Please stay safe everyone.

25 MS. NEWTON: Thank you, Your Honor.

1 You as well.

2 MR. SCUDERI: Thank you.

3 THE COURT: We're adjourned.

4 (Proceeding is adjourned)

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C E R T I F I C A T I O N

I, Lisa Beck, certify that the foregoing is
a correct transcript from the official electronic
sound recording of the proceedings in the above-
entitled matter.



Lisa Beck

Dated: January 24, 2022